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OFFICE OF PETITIONS

In re Application of :
Lowell et al. : DECISION ON PETITION
Application No. 10/676,557 :
Filed: October 1, 2003 :
Atty Docket No. 200208633-1 :

This is in response to the PETITION TO WITHDRAW HOLDING OF
ABANDONMENT BASED ON FAILURE TO RECEIVE OFFICE ACTION filed
March 13, 2008.

The petition is GRANTED.

The above-identified application became abandoned for failure to
file a response to the non-final Office action mailed April 17,
2007. This Office action set a three month period for reply
with extensions of time obtainable under § 1.136(a). No
response was received and no extension of time was obtained.
Accordingly, the application became abandoned effective July 18,
2007. A courtesy Notice of Abandonment was sent on February 8,
2008.

In response, applicants timely filed the instant petition.
Applicants petition to withdraw the holding of abandonment on
the basis that the Office action was not received at the
correspondence address of record.

A review of the application file reveals no irregularities in the mailing of the Office action mailed April 17, 2007¹. Thus, there is a strong presumption that the correspondence was properly mailed to the applicants at the correspondence address of record. In the absence of demonstrated irregularities in mailing of this Notice, petitioner must submit evidence to overcome this presumption. The following showing is required:

Practitioner must state that the Office action was not received at the correspondence address of record, and that a search of the practitioner's record(s), including any file jacket or the equivalent, and the application contents, indicates that the Office action was not received. A copy of the record(s) used by the practitioner where the non-received Office action would have been entered had it been received is required.

A copy of the practitioner's record(s) required to show non-receipt of the Office action should include the master docket for the firm. That is, if a three month period for reply was set in the nonreceived Office action, a copy of the master docket report showing all replies docketed for a date three months from the mail date of the nonreceived Office action must be submitted as documentary proof of nonreceipt of the Office action. If no such master docket exists, the practitioner should so state and provide other evidence such as, but not limited to, the following: the application file jacket; incoming mail log; calendar; reminder system; or the individual docket record for the application in question.

The practitioner states that pursuant to the statement of patent paralegal Kraft the Office action was not received at the correspondence address of record and that a search of the practitioner's records, including any file jacket or equivalent, and the application contents, indicates that the Office action was not received. In addition, practitioner has submitted a statement of paralegal Kraft and a copy of the mail log and image file wrapper for the application showing where the Office action would have been entered had it been received. Practitioner should state that he searched the file jacket and mail log; however, his presentation of those items on this

¹ It is noted that Office records indicate that effective December 1, 2007 practitioner began receiving communications in this application electronically.

petition is tantamount to representing to the Office that he has searched those records and found that the Office action is not present.

Petitioner has adequately supported his claim of non-receipt.

In view thereof, the notice of abandonment and holding of abandonment are hereby WITHDRAWN.

The petition under § 1.181 is GRANTED.

No fee is required on petition under § 1.181.

Technology Center AU 2191 has been advised of this decision. The application file is, thereby, forwarded to the Technology Center's technical support staff to withdraw the holding of abandonment and for re-sending of the non-final Office action mailed April 17, 2007 and for restarting of the period for reply.

Telephone inquiries related to this decision should be directed to the undersigned at (571) 272-3219.

A handwritten signature in black ink, appearing to read "Nancy Johnson", with a large, stylized loop at the end.

Nancy Johnson
Senior Petitions Attorney
Office of Petitions